



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RTID 0648-XC021

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the General category daily retention limit from one large medium or giant Atlantic bluefin tuna (BFT) to three large medium or giant BFT. This daily retention limit applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. This adjustment will be effective for the June through August subquota time period until further modified.

DATES: Effective June 1, 2022, through August 31, 2022, or until NMFS announces in the **Federal Register** another adjustment to the retention limit.

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SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management

Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,247.86 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The General category baseline quota is 555.7 mt. This baseline quota is further subdivided into subquotas by time period. The June through August subquota time period is 277.9 mt. Although the 2021 ICCAT recommendation regarding western Atlantic BFT management would result in an increase to the baseline U.S. BFT quota (*i.e.*, from 1,247.86 mt to 1,316.14 mt) and subquotas for 2022 (including an expected increase in General category quota from 555.7 mt to 587.9 mt, consistent with the annual BFT quota calculation process established in § 635.27(a)), domestic implementation of that recommendation is not yet final. NMFS published a proposed rule on March 7, 2022 (87 FR 12648) and is working on the final rule. The default General category daily retention limit is one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip and applies to General category permitted vessels and to HMS Charter/Headboat permitted vessels (when fishing commercially for BFT) (§ 635.23(a)(2)).

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to five BFT per vessel after considering the regulatory determination criteria under § 635.27(a)(8). As described below, NMFS considered all of the relevant determination criteria and their applicability to the General category BFT retention limit for June through August 2022. After considering these criteria, NMFS has decided to increase the daily retention limit from one to three large medium or giant BFT per vessel per day/trip (*i.e.*, three BFT measuring 73 inches (185 cm) CFL or greater) for General category permitted vessels and for HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. HMS Charter/Headboat permitted vessels fishing recreationally under the Angling category restrictions must follow the Angling category retention and size limits.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the June through August 2022 limit), whether a vessel fishing under the General category retention limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

Consideration of the Determination Criteria

As described above, under § 635.23(a)(4), NMFS may adjust the daily retention limit of large medium and giant BFT after considering the regulatory determination criteria under § 635.27(a)(8). Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General

category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of the General category if no adjustment is made (§ 635.27(a)(8)(ii)). Commercial-size BFT are anticipated to migrate to the fishing grounds off the northeast U.S. coast by early June. Given the typically slow catch rates in early June, it is unlikely that increasing the retention limit from one BFT to three BFT per vessel for a short period of time would result in the June through August subquota time period being filled. If catch rates increase, NMFS could take another action to reduce the trip limit to ensure the fishery would remain open throughout the subquota time period. In 2021, NMFS took similar action to increase the retention limit to three BFT per vessel in the first part of the June through August subquota time period (86 FR 27814, May 24, 2022). When catch rates increased in early July, NMFS reduced the retention limit from three BFT per vessel back to the default limit of one BFT per vessel (86 FR 36669, July 13, 2021). NMFS found that when the retention limit was three BFT per vessel, the vast majority of successful trips (*i.e.*, General or Charter/Headboat trips on which at least one BFT is landed under General category quota) landed only one or two BFT. Specifically, from June 1 through July 11, 2021, 91 percent of the trips landed one BFT; 7 percent landed two; and only 2 percent landed three. NMFS expects catch rates this year will be similar (*i.e.*, low in the first part of June and then increasing). In short, NMFS adjusts the retention limit throughout the season in such a way that NMFS believes, informed by catch rates in past seasons and the catch rates during the current season, increases fishing opportunities while also increasing the likelihood that the fishery will remain open throughout the subquota time period and year. NMFS also is aware of and considered the

recently published proposed rule that would set restricted-fishing days for the General category during the months of July through November 2021 (87 FR 12643, March 7, 2022). If finalized, this proposed rule would further increase the likelihood that the fishery would remain open throughout the subquota time period and year.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(8)(v) and (vi)). This retention limit adjustment would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations, (established in Recommendation 17-06 and maintained in Recommendation 20-06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. While not yet implemented domestically, this retention limit adjustment would also be consistent with ICCAT Recommendation 21-07, which would increase the quotas and subquotas slightly (87 FR 12648, March 7, 2022). In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This retention limit adjustment is in line with the established management measures and stock status determinations. It is also important that NMFS limit landings to the subquotas both to adhere to the subquota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.*, fish caught at each age) that was assumed in the latest stock assessment. Because this action is similar to past actions in previous years, this retention limit adjustment is consistent with those objectives.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota. This consideration is based on the objectives of the 2006 Consolidated HMS FMP and its amendments, and includes achieving optimum yield on a

continuing basis and optimizing the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2022, through proactive inseason management such as retention limit adjustments and/or the timing and amount of quota transfers (based on consideration of the determination criteria regarding inseason adjustments), as practicable. As discussed above, NMFS will closely monitor General category catch rates associated with the various authorized gear types (*e.g.*, harpoon, rod and reel) during the June through August time period and actively adjust the daily retention limit as appropriate to enhance scientific data collection and ensure fishing opportunities in all respective time-period subquotas as well as ensure available quota is not exceeded.

A limit lower than three fish at the start of the June through August time period could result in diminished fishing opportunities for those General category vessels using harpoon gear, based on past fish behavior early in the season. Lower limits may also result in effort shifts from the General category to the Harpoon category, which could result in premature closure of the Harpoon category (related to § 635.27(a)(8)(iv)), and, potentially, additional inseason adjustments. General category harpoon landings have averaged less than five percent of the General category landings in recent years and these landings occur early in the season. A three-fish retention limit for an appropriate period of time will provide a greater opportunity to harvest the June through August subquota time period with harpoon gear in the General category while maintaining equitable distribution of fishing opportunities for harpoon and rod and reel General category participants.

Given these considerations, we have determined that a three-fish General category retention limit is warranted for the beginning of the June-August 2022 subquota time period. This retention limit would provide a reasonable opportunity to harvest the

available U.S. BFT quota (including the expected increase in available 2022 quota based on 2021 underharvest), without exceeding it, while maintaining an equitable distribution of fishing opportunities; help optimize the ability of the General category to harvest its available quota; allow the collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat vessel owners are required to report their own catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons.

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. The timing of this rulemaking will allow approximately one weeks' prior notice to the regulated community. Affording additional prior notice and an opportunity for public comment on the change in the daily retention limit from the default level for the June through August 2022 subquota time period would be impracticable. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, responsive adjustment to the General category BFT daily retention limit from the default level is warranted to allow fishermen to take advantage of availability of fish and of quota. NMFS could not have proposed these actions earlier, as it needed to consider and respond to updated data and information about fishery conditions and this year's landings. If NMFS was to offer a public comment period now, after having appropriately considered that data, it would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriate to the amount of quota available for the period.

Fisheries under the General category daily retention limit will commence on June 1 and thus prior notice would be contrary to the public interest. Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category

vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may result in low catch rates and quota rollovers. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov*. With quota available and fish available on the grounds, and with no additional expected impacts to the stock, it would be contrary to the public interest to require vessels to wait to harvest the additional fish allowed through this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment.

Adjustment of the General category retention limit needs to be effective June 1, 2022, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Foregoing opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP and amendments. Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 24, 2022.

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National Marine Fisheries Service.

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